

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* MCCLAIN, Minors.

UNPUBLISHED  
February 18, 2016

No. 328167  
Clare Circuit Court  
Family Division  
LC No. 15-000002-NA

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*In re* MCCLAIN/DICKINSON, Minors.

No. 328168  
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Before: HOEKSTRA, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right the trial court's order terminating their parental rights to their respective minor children under MCL 712A.19b(3)(a)(i), (b)(i), (g) and (j). Because we conclude that the trial court did not err when it terminated their parental rights, we affirm.

I. BASIC FACTS

The trial court terminated respondent mother's parental rights to JM, an infant that she had with respondent father, and another child, MD, who resided with the child's father. The trial court terminated respondent father's parental rights to JM, as well as twins he had in a prior relationship, RM and RM, who resided with their mother.

It was uncontroverted that both respondents had significant and longstanding addictions to narcotics. The children came to the court's attention when JM tested positive for opiates shortly after her birth in November 2014. JM weighed approximately three pounds and experienced severe drug withdrawal. The Department of Health and Human Services filed the original petition in Saginaw County, which was the county in which the birthing hospital was located, and named only JM. The court later transferred the matter to Clare County where respondents resided. After it came to light that respondents had additional children, the Department amended the petition to include

them. The amended petition sought immediate termination of respondents' parental rights to their respective children.

At the trial and termination hearing, respondent mother admitted to using drugs, including Dilaudid, Xanax and marijuana, during her pregnancy with JM. She obtained the drugs "off the street" and shot Dilaudid intravenously more than six times daily. Respondent father helped respondent mother inject the Dilaudid. Respondent mother had been offered counseling during her pregnancy, but refused to participate. She was also inconsistent with prenatal care. When respondent mother was due to deliver, there was concern regarding the baby's extremely low weight, but respondent mother did not comply with medical directives to go immediately to the hospital. Respondents went to the hospital hours later and spent the night in their car before seeking admission. Respondent mother was discharged from the hospital shortly after JM's birth and was offered treatment at a Methadone clinic. However, she did not believe she had a problem and did not follow through with the treatment.

After JM's birth, respondents did not visit her for more than two weeks while she was in the Neonatal Intensive Care Unit. Respondents were offered housing and meals at a hospitality house so that they could participate in essential caregiving education and have an opportunity to bond with JM, but they declined. They visited JM for about half an hour on a day in December 2014.

Beginning in November 2014, respondents were the focus of a multi-county drug trafficking investigation. Officers searched respondents' home and found paraphernalia commonly used in Methamphetamine labs. Officers also conducted undercover drug buys at respondent father's business. These investigations led to respondents' arrest and incarceration for possessing, manufacturing and distributing controlled substances, particularly Methamphetamine, and operating a drug house. As of the termination hearing, respondent father had been incarcerated since December 2014. Respondent mother was released from jail in April 2015. She did not seek to have contact with JM. Shortly after her release, she was incarcerated again because of drug possession. At the time of the termination hearing, she did not have stable housing or a legal source of income. Moreover, although she testified that she was willing to participate in an in-patient drug treatment program, she had yet to complete the necessary paperwork.

It was undisputed that respondent mother had virtually no contact with MD for more than one year; she did not provide any care or financial support. Similarly, respondent father had not had any contact with the twins since April 2014. Their mother testified that he was verbally and physically abusive to her in the children's presence. She had obtained a personal protection order against respondent father after he threw a toy during an argument that struck one of the twins, leaving her with a black and blue eye. Also, one twin was injured when he grabbed her from her mother's arms while she was attempting to leave the house with the children. The twins' mother filed for divorce in 2014 and respondent father admitted that he did not participate in any of the custody proceedings. Respondent father testified that his drug addiction kept him away from his children.

## I. STATUTORY GROUNDS

Respondent mother argues that the trial court erred when it found that the Department established at least one statutory ground for terminating her parental rights.<sup>1</sup> Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. See *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). This Court reviews a trial court's findings of fact in termination proceedings for clear error. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

With respect to JM and MD, the trial court found that the Department had established by clear and convincing evidence grounds to terminate respondent mother's parental rights under MCL 712A.19b(3)(a)(ii), (g), and (j). The trial court also relied on MCL 712A.19b(3)(b)(ii) as a ground to terminate respondent's rights to JM.

The trial court could terminate respondent mother's parental rights to JM or MD if she "deserted the child for 91 or more days and has not sought custody of the child during that period." MCL 712A.19b(3)(a)(ii). The trial court found that respondent mother had not taken any steps to regain custody of JM for more than 91 days and had abandoned MD by failing to maintain contact and provide support for more than 91 days.

MCL 712A.19b(3)(b)(ii) addresses physical injury where the parent "had the opportunity to prevent the physical injury or physical or sexual abuse" and failed to do so and "there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home." The trial court found that respondent mother physically injured JM through her illegal drug use; specifically, it found that respondent mother caused the child to have a low birth weight and severe drug withdrawal.

With respect to MCL 712A.19b(3)(g), which addresses the parent's failure "to provide proper care or custody for the child," the trial court found that respondent mother was unable to provide proper care and custody since she had not addressed her serious drug addiction despite being offered treatment services, had abandoned JM at the hospital, and had made no effort to create any type of bond or show any caring for JM. Moreover, she had not provided MD with any care or support for a significant time and only visited her sporadically and with the primary intent of having a roof over her head and not to parent the child. The court further found that there was no reasonable expectation that respondent mother would be able to provide proper care and custody

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<sup>1</sup> Respondent father does not challenge the trial court's findings on the statutory grounds for termination. Moreover, neither respondent challenges the trial court's findings concerning the children's best interests.

within a reasonable time considering the children's ages because of her very serious drug addiction. *Id.* The court noted that after being released from jail, she continued to abuse drugs knowing that there was a pending termination proceeding.

Lastly, under MCL 712A.19b(3)(j), the trial court may terminate respondent mother's parental rights if there "is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." With respect to that ground, the trial court found a reasonable likelihood that the children would be in serious danger if returned to respondent mother's care given her longstanding addiction to dangerous drugs.

Respondent mother first asserts that her failure to participate in parenting time before initial disposition did not establish that she abandoned the children under MCL 712A.19b(3)(a)(ii). She notes that she had sporadic visits with her children, attended hearings, and was actively seeking custody.

The trial court did not clearly err in finding that respondent mother had abandoned MD. The record shows that respondent mother would go for months without having any contact with the child. She did not provide any care or financial support for the child for more than 91 days. With respect to JM, respondent mother took no steps to provide and plan for the child after her birth. She declined arrangements that would have helped her care for the infant, did not see her after birth until there was a brief visit in December 2014, did not offer any care plan before the infant's discharge from the hospital, and then declined to participate in parenting time and did not follow through with parenting time after arrangements were made. The caseworker testified that respondent had a pattern of deserting her children. The fact that she attended the hearings is unpersuasive. Other than passively attending hearings, she did virtually nothing to show her willingness to care and plan for JM.

Moreover, the trial court did not clearly err in concluding that she had not provided proper care and custody and that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering the children's ages. MCL 712A.19b(3)(g). She had chronically abused drugs since 2003. By 2014, she was heavily abusing multiple drugs, even while pregnant with JM. After being released from jail, she continued to abuse drugs knowing that there was a pending termination proceeding. It is significant that respondents were abusing Methamphetamine, which is well known to be a particularly dangerous and highly addictive substance. Nothing in the record shows that respondent mother made any attempt to avail herself of services offered to address her substance abuse and establish or repair the bond with her children, even when her parental rights hung in the balance.

These proofs similarly support the trial court's findings relative to MCL 712A.19b(3)(j). There was a reasonable likelihood that the children would be in serious danger if returned to respondent mother's care because of her longstanding addiction to dangerous drugs and criminality in the home. Respondent father has a significant criminal history, including breaking and entering, possession of controlled substances, possession of marijuana, use of controlled substances, operating while visibly impaired,

and delivery or manufacture of cocaine or heroin or another narcotic. During the termination hearing, respondent father remained incarcerated on two counts of controlled substance-delivery or manufacture and maintaining a drug house. The alleged drug house was the home in which respondents lived. Components of Methamphetamine production were found in the house and respondent father's business. Methamphetamine production and its lingering effects in the home and business created a risk of serious harm to the children. Respondent father's clear link to the drug community also posed a danger to the children. Sadly, the record shows, as the court reasonably concluded, that respondents were "absolutely helpless in the face of drugs."

Respondent mother contends that her drug addiction alone was insufficient grounds for terminating her parental rights. She further argues that the trial court terminated her parental rights based on the doctrine of anticipatory neglect, citing *In re LaFrance Minors*, 306 Mich App 713, 731; 858 NW2d 143 (2014). However, the trial court did not terminate her rights solely because she was an addict, and it did not rely on the doctrine of anticipatory neglect. The court made findings of fact concerning respondent mother's drug addiction *and* its effect on her ability to parent her children, including the absence of a parent-child bond, financial support and suitable housing. The trial court did not clearly err in finding that respondent mother had neglected all her children. Moreover, the trial court stated that there was insufficient evidence to terminate respondent mother's parental rights to MD under MCL 712A.19b(3)(b)(i), relying on *In re LaFrance Minors*, and stating: "The factual basis to extend the injuries suffered by and the abuse suffered by [JM] while the mother was pregnant do not extend to [MD]."<sup>2</sup>

The trial court did not clearly err when it found that the Department had established these grounds for termination by clear and convincing evidence.

## II. REUNIFICATION EFFORTS AND DUE PROCESS

Respondents also argue that the Department failed to provide them with reasonable efforts to reunify them with the children. Respondent father couches this argument in constitutional terms, arguing that he was denied due process.

The Department generally has the obligation to make reasonable efforts to reunify a family before terminating parental rights. See MCL 712A.19a(2); MCL 722.638. Respondent mother argues that she was provided with reasonable reunification efforts for only two months between the time of the initial petition and amended petition. Respondent father argues that he was not offered any reunification services. Respondents maintain that the Department chose to immediately amend the petition seeking termination to justify its minimal contact with respondent father. Respondent father was contacted only once during his five-month incarceration. Respondents assert that petitioner's conduct was aimed at ensuring that respondent father would fail to rectify the conditions that led to removal; specifically, they argue that the caseworker failed to

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<sup>2</sup> We decline to address whether this ruling was error. Cf. *In the Matter of LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973).

follow up with respondent father and created a request for a service that respondent father could not utilize.

Respondents' claim is meritless. The Department was not required to provide any reunification services because it sought immediate termination of respondents' parental rights at the initial disposition due to the aggravated circumstance of abandonment or unreasonable risk of harm. See MCL 712A.19a(2); MCL 722.638; MCL 712A.18f(1)(b). The Department also did not create the conditions that led to termination of respondents' parental rights. The conditions were all of their own doing. Respondent mother chose to abuse controlled substances while pregnant with JM. Respondents were encouraged to visit with JM, but chose not to do so. Respondent mother chose to have limited contact with MD and not provide any support for more than a year. Respondent father likewise chose to abuse and traffic drugs and not to provide any care or have any contact with the twins for a year. Respondents created and failed to rectify the problems that caused the children's removal.

The Department, although not required to make reasonable reunification efforts, did so nonetheless. Respondent mother declined the services offered. Initially, respondent father was a putative father. A putative father is not considered a parent under MCR 3.903(A) and is not entitled to an agency's services until he perfects paternity. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). In December 2014, the trial court advised respondent father that it was important for him to either sign JM's birth certificate or an affidavit of parentage within 14 days. Respondent father failed to do so until more than two months after the child's birth. He also was aware prior to signing the affidavit of parentage that an amended petition requesting termination at initial disposition was going to be filed. Even though the Department was not required to do so, respondent father was offered services and refused to participate.

The Department did not violate respondent father's right to due process.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Patrick M. Meter  
/s/ Michael J. Kelly